

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM J. FOLEY,

Plaintiff,
v.

Case No.: 2:11-cv-11856
Hon. Denise Page Hood
Mag. Michael J. Hluchaniuk

CITY OF WALLED LAKE, CAPTAIN J. ELLSWORTH,
DET. SCHNEIDER, P.O. ANTHONY NOBLE, P.O. SCOTT BOSLEY,
P.O. KENNETH AYERS, OAKLAND CNTY. DEPUTY JOHN JACOB,
VILLAGE OF WOLVERINE LAKE, KMG PRESTIGE, INC., JUDITH A.
LESTER, TAMI BASTIEN, MARCIA STEVENS, DEPUTY LARRY CATANZARO
SGT. BUFFA, DEPUTY R. CHATTERSON, OAKLAND CNTY. DET. K. HILLER
LAURA MASISEVICH, TRINITY HEALTH, KELLY GREEN, WALLED LAKE VILLA
APARTMENTS and JOHN DOES 1-10,

Defendants,

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**F.R.Civ.P 56(f) AFFIDAVIT OF HUGH M. DAVIS REGARDING NEEDED
DISCOVERY IN ORDER TO FULLY RESPOND TO PLAINTIFFS' MOTION TO
DISMISS UNDER FED. R. CIV. P. 12(b)(6) (DKT 40)**

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

Affiant, Hugh M. Davis, being duly sworn, says:

1. He is the attorney for Plaintiff in this case and has reviewed Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (Dkt 40). He has drafted a response to that motion with supporting brief, which is being contemporaneously filed.
2. However, he is unable to completely respond to the motion because of a lack of discovery, particularly with regard to Plaintiffs' Count I of his Second Amended Complaint (Violation of Civil Rights Pursuant to 42 U.S.C. § 1983) as to corporate Defendant Trinity, and Count VII (Conspiracy to Violate Civil Rights).
3. Without adequate discovery, including depositions of Defendants Maisevich, Jacobs, Chatterson, Hiller, Catanzaro, and possible unknown others with whom Trinity or Highland Haven employees may have consulted, he is unable with the requisite specificity to demonstrate the factual predicate and background for the civil conspiracy in retaliation for

Plaintiff's exercise of his First Amendment rights, resulting in Plaintiff's false arrest on or about April 12, 2010 and subsequent dispossession of his leasehold thereafter.

4. Further, without adequate discovery as described above, Plaintiff is unable to fully assert the factual predicate, with respect to unconstitutional policies and/or customs for his Monell claims against corporate Defendant Trinity.
5. Plaintiffs therefore request that this Honorable Court hold this motion in abeyance and hold a scheduling conference in order to determine how much time will be necessary for discovery.

Further Affiant sayeth not.

By: s/Hugh M. Davis
Hugh M. Davis